

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

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LUTHER D. THOMAS, Clerk
By: *[Signature]* Deputy Clerk

IN RE: TRI-STATE
CREMATORIAL LITIGATION) MDL DOCKET NO. 1467

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This relates to all actions.)

MOTION OF LIAISON AND LEAD FUNERAL HOME
DEFENSE COUNSEL FOR CONTEMPT AND
REDISTRIBUTION OF FEES AND EXPENSES

Liaison and Lead Defense Counsel for the Funeral Home Defendants ("Funeral Home Counsel") respectfully submit this their motion for an order for contempt and to redistribute fees and expenses among the Funeral Home Defendants.

This 4th day of June 2003.

BRINSON, ASKEW, BERRY, SEIGLER,
RICHARDSON & DAVIS, LLP

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Home Defendants

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

**IN RE: TRI-STATE
CREMATORIAL LITIGATION**) **MDL DOCKET NO. 1467**
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**BRIEF IN SUPPORT OF MOTION OF LIAISON AND LEAD FUNERAL
HOME DEFENSE COUNSEL FOR CONTEMPT AND
REDISTRIBUTION OF FEES AND EXPENSES**

By its Order of August 16, 2002, this Court appointed Messrs. Brinson and Davis of the law firm Brinson, Askew, Berry, Seigler, Richardson & Davis, LLP as Liaison and Lead Counsel on behalf of the Funeral Home Defendants, setting out their various duties and obligations as well as their rights to payment. Specifically, the Funeral Home Defendants were ordered to submit information to counsel for the individual defendant funeral homes for payment. The Court specifically ordered that, "[e]ach funeral home defendant shall pay a pro rata share of expenses incurred and fees earned by Liaison and Lead Counsel acting in such capacities. Should any defendant funeral homes be later joined or added, they will pay their pro rata share of any activity which would have benefitted them and all funeral homes will be credited accordingly. Defendant funeral homes shall remit payment to Liaison and Lead Counsel within thirty (30) days of submission of the statement for services."

Funeral Home Counsel have provided services and have advanced monies or incurred expenses for various vendors, including court reporters, expert witnesses and technical service representatives. Funeral Home Counsel have submitted bills to the various Funeral Home Defendants who have largely paid their individual proportionate shares of the fees and expenses. However, three groups of Funeral Home Defendants each claim that they have neither cash flow or assets sufficient to pay, nor liability insurance to cover, their shares of Funeral Home Counsel's fees and expenses incurred to date, as ordered by the Court. Specifically, representatives of the funeral home groups, to wit: (1) Patton's Funeral Home, Inc.;¹ (2) Family Mortuary, Inc. and House of Overstreet;² and (3) Covenant Funeral Services³ have each been billed for their proportionate share of the fees and expenses since this Court's Order of August 16, 2002; however, none of said three groups have paid any of their respective portions of the fees and expenses incurred.

¹ Patton Funeral Home, as represented by its counsel, sent one (1) decedent to Tri-State Crematory on or about August 6, 1996.

² Family Mortuary Inc. was owned by the same owners as House of Overstreet, Inc. They have been treated as one (1) group. Family Mortuary sent one decedent to Tri-State Crematory on October 29, 2001; House of Overstreet sent four (4) decedents to Tri-State between 1988 - 2002, and all four were between 1997 - 2002, and two (2) decedents have been identified by the GBI.

³ Covenant sent twenty-seven (27) decedents to Tri-State between 1997 - 2002, and none prior to 1997. Sixteen (16) decedents have been identified by the GBI.

On January 21, 2003 and February 5, 2003, the Court ordered that all Funeral Home Defendants who were more than sixty (60) days delinquent in their payment of fees and expenses to Liaison and Lead Counsel for the Funeral Home Defendants, and who failed to make satisfactory arrangements with J. Anderson Davis for such past due fees and expenses, appear before the Court to show cause for their failure. A hearing was held on Tuesday, February 11, 2003, and appearing, *inter alia*, were representatives of Family Mortuary and House of Overstreet, and a corporate representative of Covenant Funeral Services.

On February 12, 2003, an Order was filed requiring tax returns to be provided to J. Anderson Davis by Walter Crox, officer for Defendant Covenant Funeral Services, and by Patton Funeral Home, Inc., represented by Richard Elliston. Covenant Funeral Services timely complied with the Court's Order. However, Patton Funeral Services, Inc. has yet to comply.

During the February 11 hearing, representatives of Family Mortuary and House of Overstreet stated to the Court that they requested "a little additional time to pay." (Trans. Feb. 11, 2003 hearing, p. 7). Since that time, no payment or arrangements for payment have been made.

Accordingly, Funeral Home Counsel respectfully move the Court to enter an Order holding these groups in contempt, and/or to redistribute the shares of fees and expenses of the three named groups evenly among the thirty-two (32) remaining Funeral Home Defendants.

Funeral Home Counsel have notified all Funeral Home Defendants that the aforementioned funeral home groups apparently cannot pay their respective shares incurred to date. Representatives of Jesse Jones Funeral Home, Inc., Peeples Funeral Home, Inc., Julian Peeples Memorial Chapel, Inc. d/b/a Julian Peeples Funeral Home and Love Funeral Home, Inc., have indicated their opposition to this request for the redistribution of fees and expenses among the remaining funeral home defendant groups. No one on the Funeral Home Steering Committee approves these groups not paying their way, but recognizes the limitations. It is fair to state that all other funeral homes, including the SCI defendants, submit that these three groups should pay their fair share. The Court has previously ordered them to show cause why they cannot. Each funeral group continues to operate, albeit at a loss according to their representations or tax returns.

Funeral Home Counsel submit this motion for the Court's review and invite the Funeral Home Defendants' response.

Respectfully submitted this 1st day of June 2003.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Motion of Liaison and Lead Funeral Home Defense Counsel for Contempt and Redistribution of Fees and Expenses, and Brief in Support Of Motion of Liaison and Lead Funeral Home Defense Counsel for Contempt and Redistribution of Fees and Expenses** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

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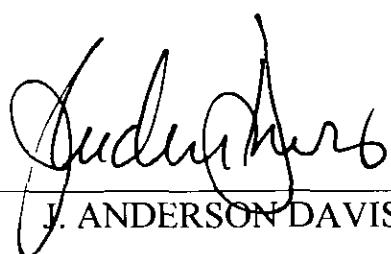
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This _____ day of June 2003.



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